

EDUCATION BUILDING PROJECTS ZONING**EXEMPTION AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE**General Description:**

This bill modifies county and municipal land use provisions relating to school buildings.

Highlighted Provisions:

This bill:

- narrows the scope of a prohibition against county and municipal land use requirements so that it applies only to structures used in the process of providing instruction to pupils.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:**

10-9a-103, as last amended by Laws of Utah 2008, Chapters 19, 112, 326, and 360

10-9a-305, as last amended by Laws of Utah 2008, Chapter 290

17-27a-103, as last amended by Laws of Utah 2008, Chapters 112, 250, 326, and 360

17-27a-305, as last amended by Laws of Utah 2008, Chapter 290



Be it enacted by the Legislature of the state of Utah:

Section 1. Section **10-9a-103** is amended to read:

10-9a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified public utility, a property owner, a property owners association, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the municipality a copy of the entity's general or long-range plan; or

(c) the entity has filed with the municipality a request for notice during the same calendar year and before the municipality provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant to develop or construct a charter school building.

(5) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that

mitigate or eliminate the detrimental impacts.

(6) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(7) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(8) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(9) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(10) "Educational facility":

(a) means a structure that houses an accredited public institution established for the purpose of offering instruction to pupils assembled at the structure, through a program for any combination of grades from preschool through grade 12, including kindergarten and a program for children with disabilities; and

(b) does not include the use of land or a structure for a service in support of a structure described in Subsection (10)(a), including inventory storage, equipment storage, food processing or preparing, vehicle storage or maintenance, or other use that supports the purpose of providing instruction to pupils.

~~[(10)]~~ (11) "Elderly person" means a person who is 60 years old or older, who desires

or needs to live with other elderly persons in a group setting, but who is capable of living independently.

~~[(11)]~~ (12) "Fire authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of fire protection and suppression services for the subject property.

~~[(12)]~~ (13) "Flood plain" means land that:

(a) is within the 100-year flood plain designated by the Federal Emergency Management Agency; or

(b) has not been studied or designated by the Federal Emergency Management Agency but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because the land has characteristics that are similar to those of a 100-year flood plain designated by the Federal Emergency Management Agency.

~~[(13)]~~ (14) "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality.

~~[(14)]~~ (15) "Geologic hazard" means:

- (a) a surface fault rupture;
- (b) shallow groundwater;
- (c) liquefaction;
- (d) a landslide;
- (e) a debris flow;
- (f) unstable soil;
- (g) a rock fall; or
- (h) any other geologic condition that presents a risk:
- (i) to life;
- (ii) of substantial loss of real property; or
- (iii) of substantial damage to real property.

~~[(15)]~~ (16) "Identical plans" means building plans submitted to a municipality that are substantially identical to building plans that were previously submitted to and reviewed and approved by the municipality and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

~~[(16)]~~ (17) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

~~[(17)]~~ (18) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the municipality has officially adopted; and

(b) will not fail in any material respect within a warranty period.

~~[(18)]~~ (19) "Land use application" means an application required by a municipality's land use ordinance.

~~[(19)]~~ (20) "Land use authority" means a person, board, commission, agency, or other body designated by the local legislative body to act upon a land use application.

~~[(20)]~~ (21) "Land use ordinance" means a planning, zoning, development, or subdivision ordinance of the municipality, but does not include the general plan.

~~[(21)]~~ (22) "Land use permit" means a permit issued by a land use authority.

~~[(22)]~~ (23) "Legislative body" means the municipal council.

~~[(23)]~~ (24) "Local district" means an entity under Title 17B, Limited Purpose Local Government Entities - Local Districts, and any other governmental or quasi-governmental entity that is not a county, municipality, school district, or unit of the state.

~~[(24)]~~ (25) "Lot line adjustment" means the relocation of the property boundary line in a subdivision between two adjoining lots with the consent of the owners of record.

~~[(25)]~~ (26) "Moderate income housing" means housing occupied or reserved for occupancy by households with a gross household income equal to or less than 80% of the

median gross income for households of the same size in the county in which the city is located.

~~[(26)]~~ (27) "Nominal fee" means a fee that reasonably reimburses a municipality only for time spent and expenses incurred in:

(a) verifying that building plans are identical plans; and

(b) reviewing and approving those minor aspects of identical plans that differ from the previously reviewed and approved building plans.

~~[(27)]~~ (28) "Noncomplying structure" means a structure that:

(a) legally existed before its current land use designation; and

(b) because of one or more subsequent land use ordinance changes, does not conform to the setback, height restrictions, or other regulations, excluding those regulations, which govern the use of land.

~~[(28)]~~ (29) "Nonconforming use" means a use of land that:

(a) legally existed before its current land use designation;

(b) has been maintained continuously since the time the land use ordinance governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

~~[(29)]~~ (30) "Official map" means a map drawn by municipal authorities and recorded in a county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the municipality's general plan.

~~[(30)]~~ (31) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

~~[(31)]~~ (32) "Plan for moderate income housing" means a written document adopted by a city legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the city;

(b) an estimate of the need for moderate income housing in the city for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the city's program to encourage an adequate supply of moderate income housing.

~~[(32)]~~ (33) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 10-9a-603, 17-23-17, or 57-8-13.

~~[(33)]~~ (34) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of a designated geologic hazard area.

~~[(34)]~~ (35) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

~~[(35)]~~ (36) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

~~[(36)]~~ (37) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

~~[(37)]~~ (38) "Receiving zone" means an area of a municipality that the municipality's land use authority designates as an area in which an owner of land may receive transferrable development rights.

~~[(38)]~~ (39) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 10-9a-516, but does not include a health care facility as defined by Section 26-21-2.

~~[(39)]~~ (40) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A,

Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

~~[(40)]~~ (41) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

~~[(41)]~~ (42) "Sending zone" means an area of a municipality that the municipality's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

~~[(42)]~~ (43) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

~~[(43)]~~ (44) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

~~[(44)]~~ (45) (a) "Subdivision" means any land that is divided, resubdivided or proposed to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection ~~[(44)]~~ (45)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for the purpose of joining one of the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither the resulting combined parcel nor the parcel remaining from the division or partition violates an applicable land use ordinance;

(ii) a recorded agreement between owners of adjoining unsubdivided properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances; or

(iv) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has not been subdivided does not constitute a subdivision under this Subsection ~~[(44)]~~ (45) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's subdivision ordinance.

~~[(45)]~~ (46) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the municipality's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

~~[(46)]~~ (47) "Unincorporated" means the area outside of the incorporated area of a city or town.

~~[(47)]~~ (48) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 2. Section **10-9a-305** is amended to read:

10-9a-305. Other entities required to conform to municipality's land use ordinances -- Exceptions -- School districts and charter schools.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any municipality when installing, constructing, operating, or otherwise using any area, land, or building situated within that municipality.

(b) In addition to any other remedies provided by law, when a municipality's land use

ordinance is violated or about to be violated by another political subdivision, that municipality may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a municipality located within the boundaries of a county of the first class when constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties;

or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

(C) park and ride facilities;

(D) maintenance facilities;

(E) all related utility lines, roadways, and other facilities serving the public transit facility; or

(F) other auxiliary facilities.

(b) The exemption from municipal land use ordinances under this Subsection (2) does not extend to any property not necessary for the construction or operation of a rail fixed guideway public transit facility.

(c) A municipality located within the boundaries of a county of the first class may not, through an agreement under Title 11, Chapter ~~3~~ 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, to obtain approval from the municipality prior to constructing a:

(i) rail fixed guideway public transit facility that extends across two or more counties;

or

(ii) structure that serves a rail fixed guideway public transit facility that extends across two or more counties, including:

(A) platforms;

(B) passenger terminals or stations;

307 (C) park and ride facilities;
308 (D) maintenance facilities;
309 (E) all related utility lines, roadways, and other facilities serving the public transit
310 facility; or
311 (F) other auxiliary facilities.

312 (3) (a) Except as provided in Subsection (4), a school district or charter school is
313 subject to a municipality's land use ordinances.

314 (b) (i) Notwithstanding Subsection (4), a municipality may:

315 (A) subject a charter school to standards within each zone pertaining to setback, height,
316 bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction
317 staging; and

318 (B) impose regulations upon the location of a project that are necessary to avoid
319 unreasonable risks to health or safety, as provided in Subsection (4)(f).

320 (ii) The standards to which a municipality may subject a charter school under
321 Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

322 (iii) Except as provided in Subsection (8)(d), the only basis upon which a municipality
323 may deny or withhold approval of a charter school's land use application is the charter school's
324 failure to comply with a standard imposed under Subsection (3)(b)(i).

325 (iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an
326 obligation to comply with a requirement of an applicable building or safety code to which it is
327 otherwise obligated to comply.

328 (4) A municipality may not:

329 (a) impose requirements ~~[for]~~ on a project to construct an educational facility, if the
330 requirements apply to landscaping, fencing, aesthetic considerations, construction methods or
331 materials, additional building inspections, municipal building codes, building use for
332 educational purposes, or the placement or use of temporary classroom facilities on school
333 property;

334 (b) except as otherwise provided in this section, require a school district or charter
335 school to participate in the cost of any roadway or sidewalk, or a study on the impact of a
336 school on a roadway or sidewalk, that is not reasonably necessary for the safety of school
337 children and not located on or contiguous to school property, unless the roadway or sidewalk is

required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act; or

(f) impose regulations upon the location of a project to construct an educational facility except as necessary to avoid unreasonable risks to health or safety.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the municipality in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a municipality may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a municipal building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a municipal building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school

district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and municipal building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the school building.

(8) (a) A charter school shall be considered a permitted use in all zoning districts within a municipality.

(b) Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis.

(c) Parking requirements for a charter school may not exceed the minimum parking requirements for schools or other institutional public uses throughout the municipality.

(d) If a municipality has designated zones for a sexually oriented business, or a business which sells alcohol, a charter school may be prohibited from a location which would otherwise defeat the purpose for the zone unless the charter school provides a waiver.

(e) (i) A school district or a charter school may seek a certificate authorizing permanent occupancy of a school building from:

(A) the state superintendent of public instruction, as provided in Subsection 53A-20-104(3), if the school district or charter school used an independent building inspector for inspection of the school building; or

(B) a municipal official with authority to issue the certificate, if the school district or charter school used a municipal building inspector for inspection of the school building.

(ii) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used its own building inspector for inspection of the school building, subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

(iii) A charter school may seek a certificate authorizing permanent occupancy of a school building from a school district official with authority to issue the certificate, if the

charter school used a school district building inspector for inspection of the school building.

(iv) A certificate authorizing permanent occupancy issued by the state superintendent of public instruction under Subsection 53A-20-104(3) or a school district official with authority to issue the certificate shall be considered to satisfy any municipal requirement for an inspection or a certificate of occupancy.

Section 3. Section **17-27a-103** is amended to read:

17-27a-103. Definitions.

As used in this chapter:

(1) "Affected entity" means a county, municipality, local district, special service district under Title 17D, Chapter 1, Special Service District Act, school district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal Cooperation Act, specified property owner, property owners association, public utility, or the Utah Department of Transportation, if:

(a) the entity's services or facilities are likely to require expansion or significant modification because of an intended use of land;

(b) the entity has filed with the county a copy of the entity's general or long-range plan; or

(c) the entity has filed with the county a request for notice during the same calendar year and before the county provides notice to an affected entity in compliance with a requirement imposed under this chapter.

(2) "Appeal authority" means the person, board, commission, agency, or other body designated by ordinance to decide an appeal of a decision of a land use application or a variance.

(3) "Billboard" means a freestanding ground sign located on industrial, commercial, or residential property if the sign is designed or intended to direct attention to a business, product, or service that is not sold, offered, or existing on the property where the sign is located.

(4) "Charter school" includes:

(a) an operating charter school;

(b) a charter school applicant that has its application approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, The Utah Charter Schools Act; and

(c) an entity who is working on behalf of a charter school or approved charter applicant

to develop or construct a charter school building.

(5) "Chief executive officer" means the person or body that exercises the executive powers of the county.

(6) "Conditional use" means a land use that, because of its unique characteristics or potential impact on the county, surrounding neighbors, or adjacent land uses, may not be compatible in some areas or may be compatible only if certain conditions are required that mitigate or eliminate the detrimental impacts.

(7) "Constitutional taking" means a governmental action that results in a taking of private property so that compensation to the owner of the property is required by the:

(a) Fifth or Fourteenth Amendment of the Constitution of the United States; or

(b) Utah Constitution Article I, Section 22.

(8) "Culinary water authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of the culinary water system and sources for the subject property.

(9) "Development activity" means:

(a) any construction or expansion of a building, structure, or use that creates additional demand and need for public facilities;

(b) any change in use of a building or structure that creates additional demand and need for public facilities; or

(c) any change in the use of land that creates additional demand and need for public facilities.

(10) (a) "Disability" means a physical or mental impairment that substantially limits one or more of a person's major life activities, including a person having a record of such an impairment or being regarded as having such an impairment.

(b) "Disability" does not include current illegal use of, or addiction to, any federally controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C. 802.

(11) "Educational facility":

(a) means a structure that houses an accredited public institution established for the purpose of offering instruction to pupils assembled at the structure, through a program for any combination of grades from preschool through grade 12, including kindergarten and a program

462 for children with disabilities; and

463 (b) does not include the use of land or a structure for a service in support of a structure
464 described in Subsection (11)(a), including inventory storage, equipment storage, food
465 processing or preparing, vehicle storage or maintenance, or other use that supports the purpose
466 of providing instruction to pupils.

467 ~~[(11)]~~ (12) "Elderly person" means a person who is 60 years old or older, who desires
468 or needs to live with other elderly persons in a group setting, but who is capable of living
469 independently.

470 ~~[(12)]~~ (13) "Fire authority" means the department, agency, or public entity with
471 responsibility to review and approve the feasibility of fire protection and suppression services
472 for the subject property.

473 ~~[(13)]~~ (14) "Flood plain" means land that:

474 (a) is within the 100-year flood plain designated by the Federal Emergency
475 Management Agency; or

476 (b) has not been studied or designated by the Federal Emergency Management Agency
477 but presents a likelihood of experiencing chronic flooding or a catastrophic flood event because
478 the land has characteristics that are similar to those of a 100-year flood plain designated by the
479 Federal Emergency Management Agency.

480 ~~[(14)]~~ (15) "Gas corporation" has the same meaning as defined in Section 54-2-1.

481 ~~[(15)]~~ (16) "General plan" means a document that a county adopts that sets forth
482 general guidelines for proposed future development of the unincorporated land within the
483 county.

484 ~~[(16)]~~ (17) "Geologic hazard" means:

485 (a) a surface fault rupture;

486 (b) shallow groundwater;

487 (c) liquefaction;

488 (d) a landslide;

489 (e) a debris flow;

490 (f) unstable soil;

491 (g) a rock fall; or

492 (h) any other geologic condition that presents a risk:

(i) to life;

(ii) of substantial loss of real property; or

(iii) of substantial damage to real property.

~~[(17)]~~ (18) "Identical plans" means building plans submitted to a county that are substantially identical building plans that were previously submitted to and reviewed and approved by the county and describe a building that is:

(a) located on land zoned the same as the land on which the building described in the previously approved plans is located; and

(b) subject to the same geological and meteorological conditions and the same law as the building described in the previously approved plans.

~~[(18)]~~ (19) "Improvement assurance" means a surety bond, letter of credit, cash, or other security:

(a) to guaranty the proper completion of an improvement;

(b) that is required as a condition precedent to:

(i) recording a subdivision plat; or

(ii) beginning development activity; and

(c) that is offered to a land use authority to induce the land use authority, before actual construction of required improvements, to:

(i) consent to the recording of a subdivision plat; or

(ii) issue a permit for development activity.

~~[(19)]~~ (20) "Improvement assurance warranty" means a promise that the materials and workmanship of improvements:

(a) comport with standards that the county has officially adopted; and

(b) will not fail in any material respect within a warranty period.

~~[(20)]~~ (21) "Interstate pipeline company" means a person or entity engaged in natural gas transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

~~[(21)]~~ (22) "Intrastate pipeline company" means a person or entity engaged in natural gas transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

~~[(22)]~~ (23) "Land use application" means an application required by a county's land use

524 ordinance.

525 ~~[(23)]~~ (24) "Land use authority" means a person, board, commission, agency, or other
526 body designated by the local legislative body to act upon a land use application.

527 ~~[(24)]~~ (25) "Land use ordinance" means a planning, zoning, development, or
528 subdivision ordinance of the county, but does not include the general plan.

529 ~~[(25)]~~ (26) "Land use permit" means a permit issued by a land use authority.

530 ~~[(26)]~~ (27) "Legislative body" means the county legislative body, or for a county that
531 has adopted an alternative form of government, the body exercising legislative powers.

532 ~~[(27)]~~ (28) "Local district" means any entity under Title 17B, Limited Purpose Local
533 Government Entities - Local Districts, and any other governmental or quasi-governmental
534 entity that is not a county, municipality, school district, or unit of the state.

535 ~~[(28)]~~ (29) "Lot line adjustment" means the relocation of the property boundary line in
536 a subdivision between two adjoining lots with the consent of the owners of record.

537 ~~[(29)]~~ (30) "Moderate income housing" means housing occupied or reserved for
538 occupancy by households with a gross household income equal to or less than 80% of the
539 median gross income for households of the same size in the county in which the housing is
540 located.

541 ~~[(30)]~~ (31) "Nominal fee" means a fee that reasonably reimburses a county only for
542 time spent and expenses incurred in:

543 (a) verifying that building plans are identical plans; and

544 (b) reviewing and approving those minor aspects of identical plans that differ from the
545 previously reviewed and approved building plans.

546 ~~[(31)]~~ (32) "Noncomplying structure" means a structure that:

547 (a) legally existed before its current land use designation; and

548 (b) because of one or more subsequent land use ordinance changes, does not conform
549 to the setback, height restrictions, or other regulations, excluding those regulations that govern
550 the use of land.

551 ~~[(32)]~~ (33) "Nonconforming use" means a use of land that:

552 (a) legally existed before its current land use designation;

553 (b) has been maintained continuously since the time the land use ordinance regulation
554 governing the land changed; and

(c) because of one or more subsequent land use ordinance changes, does not conform to the regulations that now govern the use of the land.

~~[(33)]~~ (34) "Official map" means a map drawn by county authorities and recorded in the county recorder's office that:

(a) shows actual and proposed rights-of-way, centerline alignments, and setbacks for highways and other transportation facilities;

(b) provides a basis for restricting development in designated rights-of-way or between designated setbacks to allow the government authorities time to purchase or otherwise reserve the land; and

(c) has been adopted as an element of the county's general plan.

~~[(34)]~~ (35) "Person" means an individual, corporation, partnership, organization, association, trust, governmental agency, or any other legal entity.

~~[(35)]~~ (36) "Plan for moderate income housing" means a written document adopted by a county legislative body that includes:

(a) an estimate of the existing supply of moderate income housing located within the county;

(b) an estimate of the need for moderate income housing in the county for the next five years as revised biennially;

(c) a survey of total residential land use;

(d) an evaluation of how existing land uses and zones affect opportunities for moderate income housing; and

(e) a description of the county's program to encourage an adequate supply of moderate income housing.

~~[(36)]~~ (37) "Plat" means a map or other graphical representation of lands being laid out and prepared in accordance with Section 17-27a-603, 17-23-17, or 57-8-13.

~~[(37)]~~ (38) "Potential geologic hazard area" means an area that:

(a) is designated by a Utah Geological Survey map, county geologist map, or other relevant map or report as needing further study to determine the area's potential for geologic hazard; or

(b) has not been studied by the Utah Geological Survey or a county geologist but presents the potential of geologic hazard because the area has characteristics similar to those of

a designated geologic hazard area.

~~[(38)]~~ (39) "Public hearing" means a hearing at which members of the public are provided a reasonable opportunity to comment on the subject of the hearing.

~~[(39)]~~ (40) "Public meeting" means a meeting that is required to be open to the public under Title 52, Chapter 4, Open and Public Meetings Act.

~~[(40)]~~ (41) "Receiving zone" means an unincorporated area of a county that the county's land use authority designates as an area in which an owner of land may receive transferrable development rights.

~~[(41)]~~ (42) "Record of survey map" means a map of a survey of land prepared in accordance with Section 17-23-17.

~~[(42)]~~ (43) "Residential facility for elderly persons" means a single-family or multiple-family dwelling unit that meets the requirements of Section 17-27a-515, but does not include a health care facility as defined by Section 26-21-2.

~~[(43)]~~ (44) "Residential facility for persons with a disability" means a residence:

(a) in which more than one person with a disability resides; and

(b) (i) is licensed or certified by the Department of Human Services under Title 62A, Chapter 2, Licensure of Programs and Facilities; or

(ii) is licensed or certified by the Department of Health under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

~~[(44)]~~ (45) "Sanitary sewer authority" means the department, agency, or public entity with responsibility to review and approve the feasibility of sanitary sewer services or onsite wastewater systems.

~~[(45)]~~ (46) "Sending zone" means an unincorporated area of a county that the county's land use authority designates as an area from which an owner of land may transfer transferrable development rights to an owner of land in a receiving zone.

~~[(46)]~~ (47) "Specified public utility" means an electrical corporation, gas corporation, or telephone corporation, as those terms are defined in Section 54-2-1.

~~[(47)]~~ (48) "Street" means a public right-of-way, including a highway, avenue, boulevard, parkway, road, lane, walk, alley, viaduct, subway, tunnel, bridge, public easement, or other way.

~~[(48)]~~ (49) (a) "Subdivision" means any land that is divided, resubdivided or proposed

to be divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose, whether immediate or future, for offer, sale, lease, or development either on the installment plan or upon any and all other plans, terms, and conditions.

(b) "Subdivision" includes:

(i) the division or development of land whether by deed, metes and bounds description, devise and testacy, map, plat, or other recorded instrument; and

(ii) except as provided in Subsection [~~(48)~~] (49)(c), divisions of land for residential and nonresidential uses, including land used or to be used for commercial, agricultural, and industrial purposes.

(c) "Subdivision" does not include:

(i) a bona fide division or partition of agricultural land for agricultural purposes;

(ii) a recorded agreement between owners of adjoining properties adjusting their mutual boundary if:

(A) no new lot is created; and

(B) the adjustment does not violate applicable land use ordinances;

(iii) a recorded document, executed by the owner of record:

(A) revising the legal description of more than one contiguous unsubdivided parcel of property into one legal description encompassing all such parcels of property; or

(B) joining a subdivided parcel of property to another parcel of property that has not been subdivided, if the joinder does not violate applicable land use ordinances;

(iv) a bona fide division or partition of land in a county other than a first class county for the purpose of siting, on one or more of the resulting separate parcels:

(A) an unmanned facility appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or intrastate pipeline company; or

(B) an unmanned telecommunications, microwave, fiber optic, electrical, or other utility service regeneration, transformation, retransmission, or amplification facility; or

(v) a recorded agreement between owners of adjoining subdivided properties adjusting their mutual boundary if:

(A) no new dwelling lot or housing unit will result from the adjustment; and

(B) the adjustment will not violate any applicable land use ordinance.

(d) The joining of a subdivided parcel of property to another parcel of property that has

not been subdivided does not constitute a subdivision under this Subsection ~~[(48)]~~ (49) as to the unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision ordinance.

~~[(49)]~~ (50) "Township" means a contiguous, geographically defined portion of the unincorporated area of a county, established under this part or reconstituted or reinstated under Section 17-27a-306, with planning and zoning functions as exercised through the township planning commission, as provided in this chapter, but with no legal or political identity separate from the county and no taxing authority, except that "township" means a former township under Laws of Utah 1996, Chapter 308, where the context so indicates.

~~[(50)]~~ (51) "Transferrable development right" means the entitlement to develop land within a sending zone that would vest according to the county's existing land use ordinances on the date that a completed land use application is filed seeking the approval of development activity on the land.

~~[(51)]~~ (52) "Unincorporated" means the area outside of the incorporated area of a municipality.

~~[(52)]~~ (53) "Zoning map" means a map, adopted as part of a land use ordinance, that depicts land use zones, overlays, or districts.

Section 4. Section **17-27a-305** is amended to read:

17-27a-305. Other entities required to conform to county's land use ordinances -- Exceptions -- School districts and charter schools.

(1) (a) Each county, municipality, school district, charter school, local district, special service district, and political subdivision of the state shall conform to any applicable land use ordinance of any county when installing, constructing, operating, or otherwise using any area, land, or building situated within the unincorporated portion of the county.

(b) In addition to any other remedies provided by law, when a county's land use ordinance is violated or about to be violated by another political subdivision, that county may institute an injunction, mandamus, abatement, or other appropriate action or proceeding to prevent, enjoin, abate, or remove the improper installation, improvement, or use.

(2) (a) Notwithstanding Subsection (1), a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act, is not required to conform to any applicable land use ordinance of a county of the first class when constructing a:

679 (i) rail fixed guideway public transit facility that extends across two or more counties;

680 or

681 (ii) structure that serves a rail fixed guideway public transit facility that extends across
682 two or more counties, including:

683 (A) platforms;

684 (B) passenger terminals or stations;

685 (C) park and ride facilities;

686 (D) maintenance facilities;

687 (E) all related utility lines, roadways, and other facilities serving the public transit
688 facility; or

689 (F) other auxiliary facilities.

690 (b) The exemption from county land use ordinances under this Subsection (2) does not
691 extend to any property not necessary for the construction or operation of a rail fixed guideway
692 public transit facility.

693 (c) A county of the first class may not, through an agreement under Title 11, Chapter
694 [3] 13, Interlocal Cooperation Act, require a public transit district under Title 17B, Chapter 2a,
695 Part 8, Public Transit District Act, to obtain approval from the county prior to constructing a:

696 (i) rail fixed guideway public transit facility that extends across two or more counties;

697 or

698 (ii) structure that serves a rail fixed guideway public transit facility that extends across
699 two or more counties, including:

700 (A) platforms;

701 (B) passenger terminals or stations;

702 (C) park and ride facilities;

703 (D) maintenance facilities;

704 (E) all related utility lines, roadways, and other facilities serving the public transit
705 facility; or

706 (F) other auxiliary facilities.

707 (3) (a) Except as provided in Subsection (4), a school district or charter school is
708 subject to a county's land use ordinances.

709 (b) (i) Notwithstanding Subsection (4), a county may:

(A) subject a charter school to standards within each zone pertaining to setback, height, bulk and massing regulations, off-site parking, curb cut, traffic circulation, and construction staging; and

(B) impose regulations upon the location of a project that are necessary to avoid unreasonable risks to health or safety, as provided in Subsection (4)(f).

(ii) The standards to which a county may subject a charter school under Subsection (3)(b)(i) shall be objective standards only and may not be subjective.

(iii) Except as provided in Subsection (8)(d), the only basis upon which a county may deny or withhold approval of a charter school's land use application is the charter school's failure to comply with a standard imposed under Subsection (3)(b)(i).

(iv) Nothing in Subsection (3)(b)(iii) may be construed to relieve a charter school of an obligation to comply with a requirement of an applicable building or safety code to which it is otherwise obligated to comply.

(4) A county may not:

(a) impose requirements ~~[for]~~ on a project to construct an educational facility, if the requirements apply to landscaping, fencing, aesthetic considerations, construction methods or materials, additional building inspections, county building codes, building use for educational purposes, or the placement or use of temporary classroom facilities on school property;

(b) except as otherwise provided in this section, require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study on the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated school site to an existing roadway;

(c) require a district or charter school to pay fees not authorized by this section;

(d) provide for inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by an inspector, other than the project architect or contractor, who is qualified under criteria established by the state superintendent;

(e) require a school district or charter school to pay any impact fee for an improvement project unless the impact fee is imposed as provided in Title 11, Chapter 36, Impact Fees Act; or

(f) impose regulations upon the location of a project to construct an educational facility except as necessary to avoid unreasonable risks to health or safety.

(5) Subject to Section 53A-20-108, a school district or charter school shall coordinate the siting of a new school with the county in which the school is to be located, to:

(a) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future highways; and

(b) maximize school, student, and site safety.

(6) Notwithstanding Subsection (4)(d), a county may, at its discretion:

(a) provide a walk-through of school construction at no cost and at a time convenient to the district or charter school; and

(b) provide recommendations based upon the walk-through.

(7) (a) Notwithstanding Subsection (4)(d), a school district or charter school shall use:

(i) a county building inspector;

(ii) (A) for a school district, a school district building inspector from that school district; or

(B) for a charter school, a school district building inspector from the school district in which the charter school is located; or

(iii) an independent, certified building inspector who is:

(A) not an employee of the contractor;

(B) approved by:

(I) a county building inspector; or

(II) (Aa) for a school district, a school district building inspector from that school district; or

(Bb) for a charter school, a school district building inspector from the school district in which the charter school is located; and

(C) licensed to perform the inspection that the inspector is requested to perform.

(b) The approval under Subsection (7)(a)(iii)(B) may not be unreasonably withheld.

(c) If a school district or charter school uses a school district or independent building inspector under Subsection (7)(a)(ii) or (iii), the school district or charter school shall submit to the state superintendent of public instruction and county building official, on a monthly basis during construction of the school building, a copy of each inspection certificate regarding the

772 school building.

773 (8) (a) A charter school shall be considered a permitted use in all zoning districts
774 within a county.

775 (b) Each land use application for any approval required for a charter school, including
776 an application for a building permit, shall be processed on a first priority basis.

777 (c) Parking requirements for a charter school may not exceed the minimum parking
778 requirements for schools or other institutional public uses throughout the county.

779 (d) If a county has designated zones for a sexually oriented business, or a business
780 which sells alcohol, a charter school may be prohibited from a location which would otherwise
781 defeat the purpose for the zone unless the charter school provides a waiver.

782 (e) (i) A school district or a charter school may seek a certificate authorizing permanent
783 occupancy of a school building from:

784 (A) the state superintendent of public instruction, as provided in Subsection
785 53A-20-104(3), if the school district or charter school used an independent building inspector
786 for inspection of the school building; or

787 (B) a county official with authority to issue the certificate, if the school district or
788 charter school used a county building inspector for inspection of the school building.

789 (ii) A school district may issue its own certificate authorizing permanent occupancy of
790 a school building if it used its own building inspector for inspection of the school building,
791 subject to the notification requirement of Subsection 53A-20-104(3)(a)(ii).

792 (iii) A charter school may seek a certificate authorizing permanent occupancy of a
793 school building from a school district official with authority to issue the certificate, if the
794 charter school used a school district building inspector for inspection of the school building.

795 (iv) A certificate authorizing permanent occupancy issued by the state superintendent
796 of public instruction under Subsection 53A-20-104(3) or a school district official with authority
797 to issue the certificate shall be considered to satisfy any county requirement for an inspection or
798 a certificate of occupancy.

Legislative Review Note
as of 2-11-09 12:08 PM

Office of Legislative Research and General Counsel

H.B. 409 - Education Building Projects Zoning Exemption Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
